

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF MASSACHUSETTS

STEPHEN D. CAIAZZO,)	CIVIL ACTION NO. 04-12627 RCL
Plaintiff)	
v.)	
THE MEDALLION INSURANCE)	
AGENCIES, INC.,)	
Defendant)	
)	
)	

**MOTION IN LIMINE BY THE MEDALLION INSURANCE AGENCIES, INC., TO
PRECLUDE INTRODUCTION OF EVIDENCE OR ARGUMENT CONCERNING
LACK OF NOTICE OF SUIT**

The defendant, The Medallion Insurance Agencies, Inc., hereby moves to preclude the plaintiff, Stephen D. Caiazzo, from seeking to introduce evidence that he did not receive notice of the underlying District Court action in March of 1998, or of the underlying Superior Court action in March of 2002. The plaintiff should be precluded from introducing any such evidence based on the principles of collateral estoppel. Plaintiff alleges in this case and is expected to testify that he did not become aware of the underlying suits until late 2002, after defaults had been entered. Such alleged unawareness is a key element of his liability claim against the defendant, Medallion. Such testimony should be barred by the Essex Superior Court's specific finding and judgment that the Essex Superior Court action was "duly served on" the plaintiff in March of 2002. His testimony as to the Malden District Court action should be barred by the Malden District Court's finding, which is either express or implied in that court's default judgment, that that action was duly served on the plaintiff's corporation in March of 1998.

I. Procedural Background

In 1998, an individual named Joseph Cuttichia sued a corporation known as Donna's Pub Inc. d/b/a Cai's Food & Spirits (hereinafter, "Cai's"), in the Malden District Court. Cuttichia alleged he sustained personal injuries on or about September 13, 1996 as a result of an altercation at Cai's. Service was made in hand at the corporate business address of Cai's, at 131 Exchange Street, Malden, MA, on March 3, 1998 (see Return of Service, attached hereto as "Exhibit A"). Cai's defaulted, damages were assessed, judgment entered, and an execution issued. (Exhibit B, Writ of Execution 2-2-99)

Cuttichia later filed suit against Caiazzo, individually, in the Essex Superior Court, to pierce the corporate veil and enforce the underlying judgment. The Essex Superior Court action was served upon Mr. Caiazzo as an individual at his last and usual place of abode on March 22, 2002 (see Return of Service, attached hereto as "Exhibit C"). Caiazzo failed to appear and was defaulted under Rule 55(a) on September 9, 2002. (Exhibit D). Cuttichia's counsel then moved for an assessment of damages and a default judgment. (Exhibit E).

The plaintiff acknowledges that he became aware of the underlying actions by December, 2002. (Exhibit F, Plaintiff's deposition, Vol. I, pp. 106-109).

On December 5, 2002, the court held an assessment hearing, and awarded damages. (Exhibit G). In this order, the court specifically ruled that "Defts did not appear although notices was given." (Exhibit G). At the same, the court issued notice that a real estate attachment hearing would be held on January 7, 2003. (Exhibit H).

The default judgment was entered against Caiazzo in his individual capacity. Following the December 2002 default and assessment proceedings before Judge Kottmyer, a judgment was entered against Caiazzo in the amount of \$39,805.03. The Judgment which entered on January

8, 2003 specifically states that "the summons and complaint were duly served upon the defendant(s)", including Mr. Caiazzo (see Judgment of Default Upon Assessment of Damages Pursuant to Mass.R.Civ.P. 55(b)(2), attached hereto as Exhibit I).

Following that judgment, the Essex Superior Court issued an execution against Caiazzo in the amount of approximately \$41,000. In connection therewith, Cuttichia obtained a lien against Caiazzo's real property. In April, 2003, Caiazzo allegedly agreed to pay Cuttichia \$35,000 from the sale of his encumbered property and the Essex Superior Court action, and this amount now constitutes plaintiff's alleged damages in the case against Medallion.

II. Argument

Any evidence which might be proffered by the plaintiff that he did not receive proper service, and therefore notice, of the aforementioned summons and complaints, should be precluded based on principles of collateral estoppel. A Judgment by Default pursuant to Mass.R.Civ.P. 55(b), was entered in both the Malden District Court case and the Essex Superior Court case. In both cases, the courts ruled, either expressly or impliedly, that the summons and complaints had been duly served.

Whether a federal court is to accord collateral estoppel effect to a state court judgment is controlled by state law. See *New Hampshire Motor Transp. Ass'n v. Town of Plaistow*, 67 F.3d 326, 328 (1st Cir.1995). Under Massachusetts law, "collateral estoppel precludes relitigation of issues determined in prior actions between the parties or those in privity with the parties, [provided the issues were] actually litigated in the first action, and determined by a 'final judgment on the merits.'" *Sena v. Commonwealth*, 417 Mass. 250 (1994) (citations omitted). A default judgment operates as a final disposition of the claims brought in the complaint and has

the same effect as a judgment rendered after a trial on the merits. *United States v. \$23,000 in United States Currency*, 356 F.3d 157, 163 (1st Cir.2004).

The Judgments of Default entered in Malden District Court and Essex Superior Court state that service was proper in both cases. Indeed, such findings as to the propriety of service then became, both factually and as a matter of law, the foundation on which the courts then assessed damages and entered default judgments. When he did indisputably learn of the underlying actions, by December 2002, if there was a problem with service it was incumbent upon him to challenge service at that time. Indeed, at that time, the default judgment had not even been entered yet. The plaintiff could have filed a Rule 55 (c) request to set aside the default, based upon allegedly improper service. The plaintiff did not do so, and should not now be allowed to do so.

Likewise, after the default judgment had been entered, in January 2003, the plaintiff could have filed a Rule 60 (b) motion for relief from the judgment, based upon allegedly improper service. The plaintiff did not do so – indeed, rather than challenging service, he settled with Cuttichia and allegedly paid him out of his own pocket.

Proper service of the summons and complaint is implicit in a ruling for Entry of Default Judgment pursuant to Mass. R.Civ.P. 55(b). Therefore, the plaintiff is collaterally estopped in the present case from testifying that he did not get notice of the prior actions, which he will presumably try to do in an effort to show he acted reasonably. He should not be allowed to do so, because this issue has been twice adjudicated against him. The issue of service has been resolved by actual judicial determination, and should be given preclusive effect in this subsequent litigation.

III. Conclusion

For the foregoing reasons, the defendant, The Medallion Insurance Agencies, Inc., respectfully requests that its motion be ALLOWED.

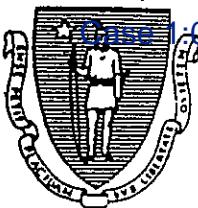
THE MEDALLION INSURANCE AGENCIES, INC.

By its attorney,



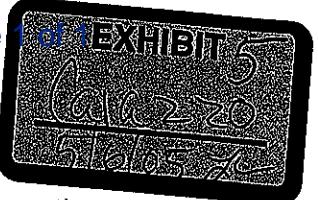
William D. Chapman
BBO #551261
Melick, Porter & Shea, LLP
28 State Street
Boston, MA 02109
(617) 523-6200

Electronic Service 12-6-06
s/WDC



Case 1:04-cv-12627 RCL Document 43-2 Filed 12/06/2006 Page 1 of 5

Commonwealth
The District Court Department



Malden Division

89 Summer Street

Malden, Massachusetts 02148-3338

Tel. 322-7500

Middlesex, ss

JOSEPH CUTICCHIA,
Plaintiff

v. -

DONNA'S PUB, INC.
Defendant

Civil Action No. 1:04-cv-12627

SUMMONS

(Rule 4)

To defendant Donna's Pub, Inc. of 131 Exchange Street, Malden, MA
(name) (address)

You are hereby summoned and required to serve upon Ronald W. Dunbar, Jr., plaintiff's attorney, whose address is 197 Portland Street, Boston, MA 02114, a copy of your answer to the complaint which is herewith served upon you, within 20 days after service of this summons, exclusive of the day of service. You are also required to file your answer to the complaint in the office of the Clerk of this court either before service upon plaintiff's attorney, or within 5 days thereafter. If you fail to meet the above requirements, judgment by default may be rendered against you for the relief demanded in the complaint. You need not appear personally in court to answer the complaint.

Unless otherwise provided by Rule 13(a), your answer must state as a counterclaim any claim which you may have against the plaintiff which arises out of the transaction or occurrence that is the subject matter of the plaintiff's claim or you will be barred from making such claim in any other action.

WITNESS PAUL J. CAVANAUGH, Presiding Justice, on February 25, 1998

(SEAL)

(date)

Joseph E. Coven
Clerk

Note: (1) When more than one defendant is involved, the names of all defendants should appear in the action. If a separate summons is used for each defendant, each should be addressed to the particular defendant.
(2) The number assigned to the complaint by the Clerk at commencement of the action should be affixed to this summons before it is served.

RETURN OF SERVICE

On

[Redacted]
(date of service)

I served a copy of the within summons, together with a copy of the

complaint upon the within named defendant in the following manner (see Rule 4(d) (1-5)):



Sheriff's Office, Middlesex County • Civil Process Division, P.O. Box 410180, Cambridge, MA 02141-1819 • (617) 547-1171
Middlesex, ss.

March 5, 1998

I hereby certify and return that on 03/03/98 at 12:45pm I served a true and attested copy of the summons and complaint & DEMAND FOR JURY TRIAL & STATEMENT OF DAMAGES, INTERROGATORIES, REQUEST FOR PRODUCTION OF DOCUMENTS in this action in the following manner: To wit, by delivering in hand to KAREN WARE, agent, person in charge at the time of service for DONNA'S PUB INC., 131 EXCHANGE ST., Malden, MA. Fees: Service \$15.00, Conveyance \$2.10, Attest \$3.00, P&H \$1.00, Travel \$3.10, Total Fees \$24.20

Karen Ware

Deputy Sheriff

Joseph Cuticchia
Donna's Pub, Inc. d/b/a
CiasiMalden District Court
89 Summer Street
Malden, MA 02148

PLAINTIFF ATTORNEY

L.O. of Steven R. Whitman
197 Portland Street
Boston, MA 02114

DEFENDANT ATTORNEY

MONEY DAMAGE ACTION (TIME STANDARDS)

 Remand District Court Filing SUMMARY VICTIM
VIOLENT
CRIME OTHER
CIVIL

WRIT OF EXECUTION ON MONEY JUDGMENT

To the Sheriffs of the several counties of the Commonwealth or their deputies, or (subject to the limitations of G.L. c. 41, § 92) any Constable of any city or town within the Commonwealth:

The plaintiff named above has recovered judgment against the defendant in the amount shown below.

WE COMMAND you, therefore, to cause payment to be made to the plaintiff in the amount of the judgment total shown below, plus postjudgment interest thereon until the date of payment in accordance with G.L. c. 235, § 8, and to collect your own fees as provided by law, from out of the value of any real or personal property of the defendant found within your territorial jurisdiction.

This execution is valid for twenty years from the date of judgment. It must be returned to the court along with your return of service within ten days after this judgment has been satisfied or discharged, or after twenty years if this judgment remains unsatisfied or undischarged.

WITNESS: Paul Cavanaugh

DATE OF ISSUE
2-2-99CLERK-MAGISTRATE OR ASSISTANT CLERK
 Judge Reeder

OFFICER'S RETURN

DATE OF SERVICE:

Fees

TOTAL FEES _____

SIGNATURE OF OFFICER

DATE OF ENTRY OF JUDGMENT

12/1/97

 CIVIL SUMMARY PROCESS Judgment for Plaintiff

\$47.00 damages, plus \$ 1920.00 prejudgment interest and \$ 125.00 costs
plus \$ 390.32 interest from date of judgment entry to
date of execution

 Possession

JUDGMENT TOTAL \$ 260,555.22
EXECUTION TOTAL \$ 26,446.34



Essex County Sheriff's Department • PO Box 2019 • Salem, MA 01970 • 978-750-1900 ext. 3590

Essex, ss.

March 26, 2002

I hereby certify and return that on 03/22/02 at 4:45pm I served a true and attested copy of the summons and complaint, civil action cover sheet, tracking order and exhibits in this action in the following manner: To wit, by leaving at the last and usual place of abode of Caiazzo, Stephen, 54 Pleasant Street, Rockport, MA. and by mailing first class to the above address on 03/25/02. Fees: Service \$10.00, Conveyance \$4.50, Attest \$4.00, P&H \$1.95, Travel \$6.60, Total Fees \$27.05

Deputy Sheriff Ulrick LaFontant

U. J. LaFontant

Deputy Sheriff

Dated: _____, 20_____

N.B. TO PROCESS SERVER:-

PLEASE PLACE DATE YOU MAKE SERVICE ON DEFENDANT IN THIS BOX ON THE ORIGINAL AND ON COPY SERVED ON DEFENDANT.

, 20

COMMONWEALTH OF
MASSACHUSETTS
ESSEX, ss.
SUPERIOR COURT
CIVIL ACTION
No.

Plaintiff(s)	v.	Defendant(s)
SUMMONS (Mass. R. Civ. P. 4)		

Commonwealth of Massachusetts**County of Essex
The Superior Court****CIVIL DOCKET# ESCV2002-00498****RE: Cuticchia v Donna's Pub Inc et al**

TO: Daniel P Munnely, Esquire
Whitman Law Offices (Steven R)
197 Portland Street
5th floor
Boston, MA 02114

DEFAULT ORDER (Mass. R. CIV. P. 55a)

The defendant(s) named below, having failed to plead or otherwise defend in the above referenced case as required by MRCP 12(a), is(are) hereby defaulted pursuant to MRCP 55(a):

Default (55a) as to defendant(s) Stephen Caiazzo. Copies mailed September 09, 2002

The plaintiff shall file:

1. A motion for an assessment of damages and default judgment pursuant to Mass. R.Civ.P.55(b)2 and subject to Mass.R.Civ.P.54(b) by **10/09/2002**, or
2. A request for Default Judgment pursuant to Mass.R.Civ.P. 55(b)1 and subject to Mass.R.Civ.P.54(b) by **10/09/2002**(contract-sum certain only).

Lauriano
Dated at ~~Salem~~, Massachusetts this 9th day of September,
2002.

Thomas H. Driscoll Jr.,
Clerk of Courts

BY:

Kevin Jones
Assistant Clerk

Telephone: (978) 687-7463

EXHIBIT F

COMMONWEALTH OF MASSACHUSETTS

ESSEX, SS

**ESSEX SUPERIOR COURT
CIVIL ACTION NO: ESCV2002-00498**

JOSEPH CUTICCHIA)
PLAINTIFF)
)
v.)
DONNA'S PUB, INC. d/b/a CIAS and)
STEPHEN CAIAZZO)
DEFENDANTS)



REQUEST FOR A DEFAULT JUDGMENT
PURSUANT TO MASS.R.CIV.P 55(B) 1

Now comes the plaintiff, Joseph Cuticchia, in the above matter and requests that this Honorable Court assess damages against the defendant, Stephen Caiazzo. As ground therefore plaintiff states as follows:

1. The defendant has been defaulted on September 9, 2002, pursuant to M.R.C.P. Rule 55(a) for failure to answer the Complaint. (A copy of Default Order Pursuant to Rule 55(a) is attached hereto as Exhibit A).
2. The judgment demanded against the defendant in this case is for a sum certain.

WHEREFORE, plaintiff, Joseph Cuticchia, requests that this Request be allowed.
SIGNED UNDER THE PENALTIES OF PERJURY THIS 7th DAY OF OCTOBER.

Plaintiff,
By His Attorney,

A handwritten signature in black ink, appearing to read "Daniel P. Munnely". It is written over a thin horizontal line.

Daniel P. Munnely, Esq.
Law Office of Steven R. Whitman
197 Portland Street
Boston, MA 02114
(617) 227-8118
BBO# 631223
c:\wp51\pleading\lak55b.def

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UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF MASSACHUSETTS
CIVIL ACTION NO. 1:04CV12627

STEPHEN D. CAIAZZO,
Plaintiff,
vs.
THE MEDALLION INSURANCE AGENCIES, INC.,
Defendant.

DEPOSITION OF STEPHEN D. CAIAZZO, a witness called on behalf of the Defendant, pursuant to the Massachusetts Rules of Civil Procedure before Lisa Abdo, Certified Shorthand Reporter and Notary Public in and for the Commonwealth of Massachusetts, at the offices of Melick, Porter & Shea, LLP, 28 State Street, Boston, Massachusetts, on Friday, May 6, 2005, commencing at 10:11 a.m.

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Deposition Services & Litigation Support (800) 343-0733

1 APPEARANCES:
2
3 Melick, Porter & Shea, LLP
4 (by William D. Chapman, Esq.,
5 and Kerry D. Florio, Esq.)
6 28 State Street
7 Boston, Massachusetts 02109
8 617.523.6200,
9 for the Plaintiff.
10
11 Law Offices of Dean Carnahan
12 (by Dean Carnahan, Esq., via telephone)
13 126 Broadway
14 Arlington, Massachusetts 02474,
15 for the Defendant.

16
17
18
19
20
21
22
23
24
25

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3 Stephen D. Caiazzo

(by Mr. Chapman) 6

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1 married, correct? 105
 2 A. Yes.
 3 Q. And your wife had permission to receive your
 4 mail?
 5 A. To receive my mail?
 6 Q. Right.
 7 A. Yes. Not sign for it. Or if she signed for
 8 it, why I was never handed. There's no
 9 reason I would sign your name if we were
 10 living in the same complex and -- you know,
 11 do whatever. But I was never handed this.
 12 Q. Right. But all I'm saying is when you
 13 were -- mail would come to where she was
 14 living addressed to you; and she would accept
 15 it and then later give it to you, correct?
 16 A. Oh, that happened on quite a few occasions.
 17 But it also didn't happen because I was never
 18 there all the time. I mean I would come in.
 19 I was there for an hour and a half, two
 20 hours, and then I'd get up and gone.
 21 Q. Right.
 22 A. This certainly would have come to mind as
 23 being an important document. It was left on
 24 the kitchen table along with, you know, an
 25 hour and a half of, "What happened? What's

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1 going on?" blah, blah, blah, so on and so
 2 forth. That does not ring a bell. So that
 3 got there, or whether it was returned -- it
 4 could have been returned. I don't know.
 5 Q. In terms of -- I mean obviously it's a
 6 summons and complaint. And if I understood
 7 one of your prior answers correctly, this is
 8 the kind of thing that your wife would become
 9 excited about basically, right?
 10 A. Absolutely.
 11 Q. And she would say -- the gist of it would be,
 12 "Oh, no. What's this? It's a lawsuit. You
 13 better take a look at this"? She would say
 14 that kind of thing to you, right?
 15 A. Exactly.
 16 Q. And would it be fair to say based upon, you
 17 know, how she was during your marriage this
 18 is the kind of thing that she would try to
 19 bring to your attention as soon as possible?
 20 A. I would think so. It's not something to be
 21 hanging around the house for long, I'll tell
 22 you that.

(Document marked as Caiazzo
 Exhibit 7 for identification)
 MR. CHAPMAN: Dean, Exhibit 7 is a

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1 letter dated December 12, '02 from the Law 107
 2 Offices of Stephen Whitman to Thomas Collins.
 3 MR. CARNAHAN: Okay.
 4 Q. Mr. Caiazzo, I'm going to hand you Exhibit 7
 5 and ask if you've ever seen that letter?
 6 A. (Witness reviews document) Yes, I have.
 7 Q. And do you remember seeing that back in
 8 December of '02?
 9 A. It's familiar. I remember seeing Stephen
 10 Whitman. And I remember seeing this as one
 11 of the envelopes that was taken by my wife
 12 and signed because there were two or three of
 13 them by the Law Offices of Stephen Whitman.
 14 Q. Okay. And you see it's a letter addressed to
 15 Mr. Collins?
 16 A. Right.
 17 Q. And Mr. Collins was representing you at that
 18 time?
 19 A. Yes, he was.
 20 Q. And Mr. Collins was representing you at that
 21 time in connection with Mr. Cuttichia's
 22 claim, correct?
 23 A. This is when I received all this information
 24 from my wife that I started to open it up and
 25 said this is the Whitman -- I mean Cuttichia

1 case that's been lagging. And this was the
 2 reason why the lien was put on the property.
 3 And that's when I decided to call Joe and
 4 settle it, find out. And then I went to Tom,
 5 and I said, "Here's the guy. Call him and
 6 get this thing squared away." And that's
 7 what this is.
 8 Q. So would it be fair to say that you had
 9 engaged Mr. Collins to get involved in the
 10 Cuttichia claim prior to the date of that
 11 letter?
 12 A. This was part of a stack of letters which I
 13 have from the Law Offices of Stephen Whitman
 14 that were mailed to King Street, maybe
 15 Pleasant Street, all of them. Some of which
 16 were secured by return request mail that was
 17 not signed by me. My wife signed my name.
 18 These were opened by me when I found them.
 19 These were backdated because the time period
 20 extended it from the time she held on. I
 21 called Tom. I says, "Get something -- this
 22 is what the deal is."
 23 Q. Again, I don't want to interrupt you, but
 24 that doesn't -- what you just said doesn't
 25 apply to this letter.

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1 A. Why wouldn't it?
 2 Q. Because it's not addressed to you.
 3 A. I understand this. But this is something
 4 that Collins had called Whitman on because
 5 Whitman is the one that I called Collins on
 6 after I received the stack of mail.
 7 Q. Yes.
 8 A. So he contacted Whitman and Whitman
 9 apparently wrote a letter here.
 10 Q. Right. All I'm saying is this letter that
 11 you have that you're holding, Exhibit 7,
 12 that's not a letter that was in the stack of
 13 documents that you got from your wife and
 14 that you gave to Mr. Collins, correct?
 15 A. No. This is the type of letters from Stephen
 16 Whitman that I recognized as being part of a
 17 group of letters that were sent to the other
 18 address that I never got until later.
 19 Subsequently, this was the follow-up letter
 20 that I -- after Tom Collins contacted
 21 Attorney Whitman. This is made out to
 22 Collins. But the other ones were made out to
 23 me. This is just a follow up from an
 24 attorney to an attorney to try and settle.
 25 Q. And where are all these prior letters from

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1 Whitman's office to you?
 2 A. Tom Collins has them. I have a copy.
 3 Q. Where is the copy you have, because it hasn't
 4 been produced?
 5 A. Oh, I got plenty of copies.
 6 Q. Well, where are they?
 7 A. Where are they? I have them.
 8 Q. Where in your possession?
 9 A. Well, I don't have them with me today. But I
 10 have them. Tom Collins had copies. I made
 11 enough copies for everybody. Tom Collins was
 12 handling it. I held on to them.
 13 Q. Where do you keep all these documents? Is
 14 there a particular place? Are they down in
 15 Florida?
 16 A. Yes.
 17 Q. And where -- do you own the property in
 18 Florida?
 19 A. No, I don't.
 20 Q. Okay. Your girlfriend does?
 21 A. Yes.
 22 Q. And is there -- where do you keep it? Do you
 23 have a desk or a filing cabinet?
 24 A. I have them in my garage.
 25 Q. In your garage. Do you have boxes in the

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1 garage?
 2 A. Yes.
 3 Q. So it's your testimony that you have some
 4 letters that pertain to this case in your
 5 garage in Florida but that haven't been
 6 produced yet; is that accurate?
 7 A. I have a whole lot of documentation that is
 8 relevant to this case, none of which would
 9 excuse the fact that the Joseph Cuttichia
 10 case was not handled properly. You know,
 11 copies of letters and stuff are fine. But
 12 the bottom line is this is years. And
 13 obviously two attorneys are trying to get
 14 ahold of me that they couldn't do and, you
 15 know, attach my real estate, attach the lien
 16 on my real estate and got paid \$45,000 for an
 17 injury that never occurred.

18 MR. CHAPMAN: And, Dean, I'll say
 19 this for the record, I am requesting that any
 20 other letters -- any documents that are
 21 within the scope of either the pending
 22 document requests or the scope of the initial
 23 disclosure obligations be produced. Okay?

24 MR. CARNAHAN: Yes. I made a note
 25 of that.

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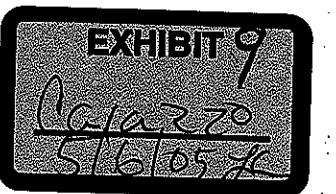
111 112
 1 Q. Now that you've seen Exhibit 7, does that
 2 help you to tell me when relative to the date
 3 of this letter that you engaged Mr. Collins
 4 to help you with the Cuttichia claim?
 5 A. Well, this letter is dated December 12, 2002.
 6 Q. Right.
 7 A. So I probably received this maybe a month
 8 before. I mean it was a short time. As soon
 9 as I received all the mail and went through
 10 it, I immediately went up to Collins. And he
 11 then did what he had to do to write a letter
 12 to Whitman or call him. And then, you know,
 13 Attorney Whitman got in touch with Collins.
 14 Q. So your best testimony is you retained or you
 15 engaged Mr. Collins to help with the
 16 Cuttichia claim sometime in November of '02?
 17 A. I mean, that's what it looks like.
 18 (Document marked as Caiazzo
 19 Exhibit 8 for identification)
 20 MR. CHAPMAN: Dean, No. 8 is an
 21 order of notice.
 22 MR. CARNAHAN: Okay.
 23 Q. I'm handing you Exhibit 8. And do you
 24 remember getting that document back in late
 25 '02?

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Deposition Services & Litigation Support (800) 343-0733
79c4914e-e53f-4d09-a020-8389e717869e

Civil Docket ECSV2002-00498

RE: Cuticchia v Donna's Pub Inc et al

TO: Daniel P Munnelly, Esquire
Whitman Law Offices (Steven R)
197 Portland Street
5th floor
Boston, MA 02114



CLERK'S NOTICE

This is to notify you that in the above referenced case the Court's action on 12/05/2002:

RE: Request upon clerk for default judgment (55b1) re: Stephen Catanzaro by Joseph Cuticchia, Donna's Pub Inc, CIAS

is as follows:

MOTION (P#4) After hearing, the court finds that the plaintiff is entitled to recover damages in the amount of \$36,231.48 plus interest of 3/6/02. Defendants did not appear although notices were given. (Diane M. Kottmyer, Justice). Notices mailed December 06, 2002

Lauren
Dated at Salem, Massachusetts this 6th day of December,
2002.

Thomas H. Driscoll Jr.,
Clerk of the Courts

BY:

Kevin Jones
Assistant Clerk

Telephone: (978) 687-7463

Copies mailed 12/06/2002

CIVIL DOCKET# ESCR2002-00498-C

Cuticchia
vs.
Donna's Pub Inc,
Stephen Caiazzo

EXHIBIT X

Caiazzo
5/6/05

ORDER OF NOTICE

To the above-named Defendant:

YOU ARE HEREBY NOTIFIED that application has been made in said action, as appears in the Motion, for a Real Estate attachment and that a hearing upon such Motion will be held at the court house at said Lawrence Superior Court, Essex County, on 01/07/2003 A.D. at 02:00 PM In CtRm 3 (Lawrence) MA

at which time you may appear and show cause why such Motion for Real Estate Attachment should not be granted.

Witness, Suzanne V. DelVecchio, Esquire, Chief Justice of the Superior Court, at Lawrence, Massachusetts this 5th day of December, 2002.

RETURN

Essex, ss.

Date:.....

I hereby certify and return that on I served a copy of the within summons, together with a copy of the Complaint in this action, upon the within-named defendant, in the following manner (See Mass.R.Civ.P. 4(d) (1-5)):

Commonwealth of Massachusetts**County of Essex****The Superior Court**CIVIL DOCKET# ESCV2002-00498
6

Cuticchia
vs.
Donna's Pub Inc et al

JUDGMENT BY DEFAULT UPON ASSESSMENT OF DAMAGES
PURSUANT TO MASS. R.CIV. P. 55(B)2

This action came on to be heard before the Court, Diane M. Kottmyer, Justice, presiding, upon the marking of plaintiff(s), Joseph Cuticchia, in the above entitled action, for a default Judgment by the Court, pursuant to Mass.R.Civ.P 55(b)2 and it appearing to the court that the complaint in said action was filed on 03/14/2002 and that the summons and complaint were duly served on the defendant(s), and that no answer or other defense has been filed by the said defendant, and that default was entered on in the office of the clerk of this court, and that no proceedings have been taken by said defendant since said default was entered,

It is ORDERED and ADJUDGED:

That the Plaintiff (s), Joseph Cuticchia recover of the Defendant (s), Donna's Pub Inc,
Stephen Caiazzo the sum of \$36,231.48 plus interest from 03/14/2002 to 01/08/2003 in the amount of \$3,573.55 and their costs of action.

Dated at Lawrence, Massachusetts this 8th day of January, 2003.

Thomas H. Driscoll Jr.,
Clerk of the Courts
By: *Karen Jones*
Assistant Clerk

copies mailed 01/08/2003